

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL No. 36 of 1990****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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JOHNBHAI ISHWARBHAI KHRISTI & 4 - Appellant(s)**Versus****RAMANBHAI BHNABHAI VANKAR & 2 - Defendant(s)**

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Appearance :

MR NS SHETH for Appellant(s) : 1 - 5.

None for Defendant(s) : 1,

MR DC DAVE for Defendant(s) : 1.2.1, 1.2.2, 1.2.3

RULE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 23/02/2007****ORAL JUDGMENT**

1. Shri N.S.Sheth, learned counsel for the
appellants. Shri N.J. Shah, learned counsel

under the authority of Mr. D.C. Dave for respondents no. 1/1 to 1/3, none for the respondent no.2, Mr.Hukum Singh, learned AGP for the respondent no.3.

2.The plaintiffs, who could secure a decree, lost in the appellate court, therefore, now are before this Court in Second Appeal under Section 100 of the Code of Civil Procedure. The plaintiffs-appellants filed the suit under Order I Rule 8 of the Code of Civil Procedure, submitting that the defendant had made certain encroachment on the public lane, therefore, such encroachment be removed. The plaintiffs submitted that the defendant owns a house admeasuring east-west 29 feet, but he had made encroachment of 21feet towards east-west and has also made encroachment south-north. It was also submitted that on a complaint about the encroachment, Panchayat had issued notice to the defendant to remove the encroachment. The defendant appeared before the Court and submitted that he had purchased the property under exh.66, a registered sale deed dated

23.7.24 and from the measurements given in the said document, it would clearly appear that he has not made any encroachment on the public lane, rather document would prove that he is within his bounds.

3. Learned trial court held that the defendant had made encroachment and the trial court accordingly directed removal of the said encroachment. The appellate court, after hearing the parties observed that in the document exh.66, east-west measurement is shown as 24 tailor gauge, which on calculation would be 52 feet east-west. The court observed that one tailor gauge would be equivalent to 2 feet 2 inches. It also observed that the measurement of house on north-west was 7 square gauge and as such defendant was sold 168 square gauge. On further calculations, the court found that the defendant was in possession of 49 feet 6 inches as was clear from the map prepared by the Commissioner. According to the court, the defendant did not make any encroachment. On basis of the said document, which was executed

in the year 1924, the Court held in favour of the defendant.

4. Learned counsel for the appellant submits that the learned appellate court misappreciated the document and did not properly understand that what really was sold to the defendant. Shri Shah, learned counsel for the respondent, on the other hand, submitted that a fair perusal and reading of the document would show that particular property was sold to the defendant and the defendant did not make any encroachment.
5. Being aggrieved with the judgment of the appellate court, the defendant has preferred this appeal.
6. The present appeal has been admitted on 10.12.90.
7. Taking into consideration the findings of the lower court are based on appreciation of evidence and appreciation of original documents, I am unable to hold that the learned first appellate court committed any illegality in granting appeal and dismissing the suit.
8. I am unable to hold that the defendant had made

any encroachment and the appellate court was unjustified in setting aside the judgment and decree passed by the lower court. So far as the substantial question of law relating to the plaintiff's easementary right is concerned, the question does not seem to have been argued before the appellate court and under the circumstances, this Court is not required to look into the said question. The question which reads that; "whether the lower appellate court was even otherwise justified in reversing the decree granted by the trial court" is concerned, in the opinion of this Court, does not arise for consideration.

9. The appeal deserves to and is accordingly dismissed. No costs.

10. Let a decree be framed accordingly.

[R.S. GARG, J.]

pirzada/-